SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 936

CLIFTON B. LAYTON,

Petitioner,

vs.

WILLIAM J. THAYNE,

Respondent.

SUPPORTING BRIEF.

This Court is given authority, by Section 24 of the Judicial Code, 28 U. S. C. A. 347, page 359, and by Section 24 (c) of the Bankruptcy Act to issue the writ in this case.

Every step prescribed by section 75 of the Bankruptcy Act has been resisted by creditors and technical constructions have been indulged by lower courts which, had they been sustained, would have destroyed effectually the statute as a relief measure for farmers. In this case, if the appellee, having lost his interest in the property by failing to redeem, had any right at all to appear in court still he did not ask for such a construction of the statute as the circuit court of appeals saw fit to make. Perhaps for the first time, a court has held that even though a farmer qualified under the act, properly invokes the jurisdiction of the court and

seeks to conform to the prescribed procedure, still he is not entitled to the possession of his farm. A denial of the possession is a denial of all rights under the statute for from a practical standpoint, a farmer, without a farm, cannot ordinarily redeem.

There is not a word in the recent decision of this Court in *Minnie Reese Richardson Wragg* v. *Federal Land Bank of New Orleans,* decided January 4, 1943, 87 L. Ed. 273

which would justify a denial of the right of possession of the petitioner in this case. Furthermore, by the express provisions of section 75 (s) 4

> "* * * such receiver shall be divested of possession and the property returned to the possession of such farmer, under the provisions of this Act."

By what process of reasoning can the court justify a judgment absolutely contradictory to the express terms of the statute? The court says:

> "* * * But it does not follow that, because a distressed farmer has a right of redemption in a farm, he is entitled to the possession thereof, together with the income therefrom, in a farmer-debtor proceeding."
>
> *Layton* v. *Thayne,* 133 F. (2d) 287.

In support of this conclusion, the court said:

> "* * * This, strictly speaking, is the 'right of redemption'. It is a mere personal privilege rather than an interest or estate in the land. It may be exercised only by those persons named in the statute."

In the *Wragg* case, the court said:

> "Respondent argues that under Alabama statutes and decisions the statutory right of redemption after foreclosure is defined as a 'personal privilege' rather than

as 'property or property rights' (Title 7, Sec. 743), and hence is not within the jurisdiction of the bankruptcy court in a farmer-debtor proceeding. But Section 75 prescribes its own criteria for determining what property interests may be brought within the jurisdiction of the court. In the interpretation and application of the Bankruptcy Act as in the case of other federal statutes, federal not local law applies. Prudence Realization Corp. *v.* Geist, 316 U. S. 89, 95, 86 L. Ed. 1293, 1298, 62 S. Ct. 978, and cases cited. It is for the bankruptcy court to determine, by reference to the provisions of the bankruptcy statute, what rights created by state law—regardless of the characterization which may be applied to them by state statutes and decisions—are within the jurisdiction of the bankruptcy court. United States *v.* Pelzer, 312 U. S. 399, 402, 403, 85 L. ed. 913, 915, 916, 61 S. Ct. 659." *Wragg* v. *Federal Land Bank of New Orleans,* 87 L. Ed., page 275.

We therefore turn to the statute itself to see what a petition under section 75 of the Bankruptcy Act brings to the Court for administration. We quote section 75 (n):

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

The right of the debtor as found by the district court and as approved by the circuit court of appeals is a right of

redemption. It was not sold upon the foreclosure of the Thayne mortgage because it did not then exist. It came into existence under the Utah Statute when the Davis County Bank foreclosed its mortgage, and through foreclosure proceedings, made the debtor a judgment debtor. It could not have been sold before it came into existence and yet when it did come into existence, it was a substantial property right. It was a right to reacquire the property by payment of the Davis County mortgage. Under section 75, the debtor had the right to go into the possession of the property and to retain possession for a period of three years provided he paid the rentals fixed by the court. It is a right which inheres in the farm property itself. In no sense is it a personal privilege alone. The right may be transferred, and the successor-in-interest may redeem. The Utah Statute so provides:

104-37-30, Utah Code Annotated, 1943.

The jurisdiction of the Court over this right is, by the statute, made exclusive and the prescribed procedure must be followed:

John Hancock Mut. L. Ins. Co. v. *Bartels,* 308 U. S. 180, 84 L. Ed. 180, 60 Sup. Ct. 221, 41 Am. Bankr. Rep. (N. S.) 296;

Kalb v. *Feuerstein,* 308 U. S. 433, 84 L. Ed. 370, 60 Sup. Ct. 343, 41 Am. Bankr. Rep. (N. S.) 501;

Wright v. *Logan,* 315 U. S. 139, 86 L. Ed. 745, 62 S. Ct. 508;

Wright v. *Union Central Life Insurance Co.,* 304 U. S. 502, 82 L. Ed. 1490, 58 S. Ct. 1025, 36 Am. Bankr. Rep. (N. S.) 950;

Wright v. *Union Central Life Insurance Co.,* 311 U. S. 273, 85 L. Ed. 184, 61 S. Ct. 196;

Mangus v. *Miller,* 87 L. Ed. 135, 63 S. Ct. 182.

Federal Land Bank of Louisville v. Morrison, 133 F. (2d) 613.

As we understand, *Wragg* v. *Federal Land Bank*, supra, this Court has simply reaffirmed the principle stated in the above cases. The Circuit Court of Appeals has departed from that principle. This Court said in the *Wragg* case:

> "But the dismissal of the original proceeding and denial of the application to reopen it were not bars to a new proceeding under Section 75 to secure whatever relief the act would afford with respect to petitioner's remaining interest in the mortgaged property. We find no intimation in the language and purposes of the Act that an unsuccessful earlier proceeding would preclude a new petition so long as the farmer retains an interest which could be administered in a proceeding under Section 75."

We understand this to mean that if the proceeding has proved abortive because of a dismissal before the interest of the farmer in the property is extinguished in the manner prescribed by the statute that he may again invoke the jurisdiction of the court. The former proceeding in this case was halted by a ruling of the circuit court of appeals to the effect that the failure to file an amended petition after the holding of this Court that the original subsection (s) was unconstitutional and the reenactment of the present constitutional provision operated as the dismissal of the proceeding. Even so, the rights of the debtor were not extinguished, and he comes within the clear ruling in the *Wragg* case.

It is interesting and helpful to speculate as to who is entitled to the possession of this property; not Thayne because his judgment had been satisfied of record; not the receiver, because the statute says upon the filing of the amended petition he shall be divested of possession, and not the Davis County Bank because its mortgage was only in process of foreclosure. No deed was issued entitling it to possession; not Lois Layton, because she acquired only

a right to redeem which right was lost when she failed to redeem. We have, then, a farm, but who is entitled to possession? If this decision stands, the benefits of the statute are certainly being frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.

We go further: The decision states the law to be the contrary of the express words of the statute itself.

The writ should issue in this case.

Respectfully submitted,

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